



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 9

3003 John Weld Peck Federal Building

550 Main Street

Cincinnati, Ohio 45202-3271

Telephone: (513) 684-3686

Facsimile: (513) 684-3946

June 13, 2005

Graphic Communications International
Union, Local 619-M, AFL-CIO
Attn: Mr. Steven Kitzmann
President
659 South Eighth Street
Louisville, KY 40203-2054

Ivy Hill Corporation
Attn: Mr. Scott Apel
Human Resources Manager
1400 East Lackawanna Avenue
Olyphant, PA 18448

Re: IVY HILL PACKAGING
Case 9-CA-42001

Gentlemen:

The Region has carefully considered the charge filed against **IVY HILL PACKAGING** alleging it violated the National Labor Relations Act. As explained below, I have decided that further proceedings on that charge should be handled in accordance with the Board's deferral policy.

Deferral Policy: The Board's deferral policy provides that this Agency will withhold making a final determination on certain arguably meritorious unfair labor practice charges when a grievance involving the same issue can be processed under the grievance/arbitration provisions of the applicable contract. *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984). This policy is based, in part, on the preference that the parties should resolve certain issues through their contractual grievance procedure in order to achieve a prompt, fair and effective settlement of their dispute. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Regional Office will defer the charge. However, this policy requires that a charge be dismissed if the charging party thereafter fails to promptly file and attempt to process a grievance on the subject matter of the charge.

Decision to Defer: Based on our investigation, I am deferring further proceedings on **the charge** to the grievance/arbitration process for the following reasons:

1. The charge alleges: That on or about January 1, 2005, the Employer violated Section 8(a)(1) and (5) of the Act by unilaterally changing its insurance benefits without notice to or bargaining with the Union.
2. The Employer and the Union have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.
3. The Employer is willing to process a grievance concerning the above allegations in the charge and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.
4. Since the above allegations in the charge appear to be covered by certain provisions of the collective-bargaining agreement, it is likely that such allegations may be resolved through the grievance/arbitration procedure.

Further Processing of the Charge: As explained below, while the charge is deferred, the Region will monitor the processing of the grievance and, under certain circumstances, will resume processing the charge.

Charging Party's Obligation: Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly file or submit the grievance to the grievance/arbitration process, or declines to have the grievance arbitrated if it is not resolved, I will dismiss the charge.

Charged Party's Conduct: If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

Inquiries and Requests for Further Processing: Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and whether continued deferral is appropriate. However, I will accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge for continued deferral of the charge or for issuance of a complaint.

Notice to Arbitrator Form: If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the award is sent to the parties.

Review of Arbitrator's Award: If the grievance is arbitrated, the Charging Party may request that this office review the arbitrator's award. The request must be in writing and addressed to me. The request should discuss whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is clearly repugnant to the Act. Further guidance on the nature of this review is provided in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

Charging Party's Right to Appeal: Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the Acting General Counsel of the National Labor Relations Board, Attn: Office of Appeals, Room 8820, 1099 – 14th Street, N.W., Washington, D.C. 20570-0001, and a copy with the Regional Director.

Appeal Due Date: The appeal must be received by the Acting General Counsel in Washington, D.C. by the close of business at **5:00 p.m. EDT on June 27, 2005**. If you mail the appeal, it will be considered timely if it is postmarked no later than one day before the due date set forth above. The appeal may not be filed by facsimile transmission or by using the Internet.

Extension of Time to File Appeal: Upon good cause shown, the Office of Appeals, on behalf of the Acting General Counsel may grant special permission for a longer period within which to file. Requests for extension of time may be filed by mail, by facsimile transmission at Fax number (202) 273-4283, or by using the Agency's Internet site. Special instructions for using the Internet are set forth in the attached Access Code Certificate. The request must be received no later than the time and date set above for filing of the appeal. A copy of any such request for an extension of time should be submitted to the Regional Director.

Appeal Contents: You are encouraged to submit a complete statement setting forth the facts and reasons why you believe the decision to defer your charge was incorrect. However, the enclosed Appeal Form (NLRB-4767) by itself will be treated as an appeal if timely filed upon the Acting General Counsel and me.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the Acting General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter. Any statement in support of your appeal should not be sent to the other party(ies). Mailing the appeal form to the parties does not relieve you from filing the appeal itself with the Acting General Counsel and sending a copy of the appeal to me by the due date.

Very truly yours,

/s/

Gary W. Muffley
Regional Director

GWM/AT/md

Enclosures (4)

cc: Ivy Hill Packaging, Attn: Mr. Bill Jessee, 4325 Shepherdsville Road, Louisville, KY 40218-2125

Acting General Counsel, Office of Appeals, National Labor Relations Board, 1099 - 14th Street,
N.W., Washington, D.C. 20570

AT
Form NLRB-5433
(7-89)

United States of America
NATIONAL LABOR RELATIONS BOARD

NOTICE TO ARBITRATOR

TO: _____
(Arbitrator)

(Address)

NLRB Case Number

9-CA-42001

NLRB Case Name

IVY HILL PACKAGING

A determination has been made by the Regional Director of Region 9 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above-named matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge. So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be forwarded to the Regional Director at 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271 at the same time that it is sent to the parties to the arbitration.

(Name)

(Title)